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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES E. PRICER and FRANK R. GROENEN

Appeal 2010-001959[1]
Application 09/752,355
Technology Center 2400

Before JEAN R. HOMERE, DEBRA K. STEPHENS, and
JAMES R. HUGHES, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] The real party in interest is Teradata Corp. (App. Br. 2.) In an Opinion (2006-1055) dated June 19, 2006, an earlier panel affirmed the Examiner's rejection of claims 1-15 as being unpatentable over the combination of Muret and Tsuchida.

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-24. (App. Br. 4.) We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' Invention

Appellants invented a method and system for tracking user actions on the Internet. (Spec. 1, ll. 20-21.) In particular, a plurality of parallel processing modules (205) load into respective data storage facilities (210) located in a data warehouse (150) user data obtained from a plurality of transaction logs (130) maintained by corresponding Internet servers (120). The obtained data contains various information entries pertaining to the user including the user's identification, request entries submitted by the user, and the time such requests were submitted on the various servers. The processing modules subsequently execute a query in parallel against their respective storage facilities using a difference database management function to select data entries associated with a particular user during a single session. (Fig. 1-3, Spec. 3, ll. 7-26.)

Illustrative Claim

Independent claim 1 further illustrates the invention. It reads as follows:

> 1. A method for use in tracking the actions of an Internet user, the method comprising:

> loading data from a plurality of transaction logs of a plurality of Internet servers into a database system managed by plural parallel processing modules, where the data includes an entry for each request to the Internet server, including information identifying which user submitted the request and information identifying the time at which the request was received; and
>
> executing a database query across the parallel processing modules using a moving difference database management function to select from the data all entries associated with a particular user and corresponding to a single session of that user.

Prior Art Relied Upon

Tsuchida	US 6,026,394	Feb. 15, 2000 (Filed Sep. 4, 1998)
Muret	US Patent App. Pub. No.: 2002/0042821 A1	Apr. 11, 2002 (Effectively filed Oct. 4, 1999)
Miller	WO 00/20998	Apr. 13, 2000 (Filed Oct. 1, 1999)

Rejection on Appeal

The Examiner rejects claims 1-24 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over the combination of Muret, Tsuchida, and Miller.

ANALYSIS

We consider Appellants' arguments *seriatim* as they are presented in the principal Brief, pages 13-27.

Representative Claim 1

Dispositive Issue: Have Appellants shown that the Examiner erred in finding that the combination of Muret, Tsuchida, and Miller teaches or suggests "executing a database query across parallel processing modules *using a moving difference database management function* to select from the data all entries associated with a particular user and corresponding to a single session of that user," as recited in independent claim 1?

Appellants argue that Miller discloses a moving difference function for calculating a moving difference of an expression when rows are sorted by a sort expression list. According to Appellants, the disclosed moving difference function is not used to select data entries pertaining to a user single session. (App. Br. 14-16.)

In response, the Examiner submits that Appellants' arguments are not persuasive because they constitute an individual attack against the references. According to the Examiner, Miller's moving difference function, when taken in combination with the Muret-Tsuchida system, teaches the disputed limitations. (Ans. 12-13.) In particular, the Examiner finds that a person of ordinary skill in the art would have recognized that that Miller's moving difference function could have been used to select data from a database such as Muret's to thereby permit quickly and easily locating entries therefrom. (*Id.* at 13.)

We agree with the Examiner. We note at the outset that Appellants do not dispute our earlier finding in the previous Opinion that the Muret-Tsuchida combination teaches executing a database query across parallel

processing modules to select from the data all entries associated with a particular user and corresponding to a single session of that user. (Op. 6-9.) Rather, Appellants' arguments dispute the Examiner's finding that Miller's moving difference database management function is capable of being used to perform the functions recited in the claim.

In resolving this dispute, we first note that the disputed limitation as emphasized above is a mere statement of intended use. Our reviewing Court has held that a statement of intended use in an apparatus claim cannot distinguish over a prior art apparatus that discloses all the recited limitations and is capable of performing the recited function. *See In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). We also note that "[a]n intended use or purpose usually will not limit the scope of the claim because such statements usually do no more than define a context in which the invention operates." *Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 320 F.3d 1339, 1345 (Fed. Cir. 2003). Although "[s]uch statements often . . . appear in the claim's preamble," a statement of intended use or purpose can appear elsewhere in a claim. *In re Stencel*, 828 F.2d 751, 754 (Fed. Cir. 1987).

Even if we were to consider the statement of intended use, we find that the statement of intended use in the present appeal is fully met by the prior art structures, which appear to be capable of performing the recited function. In particular, we find that the moving difference function disclosed in Miller is used as a tool for performing data mining of applications in a relational database. (Abst., p. 25, ll. 26-34.) Therefore, one of ordinary skill would have readily appreciated that it is capable of being

used to select certain data entries designated to be mined in the database. Further, we have not found on the record before us any evidence, nor have Appellants shown,[2] that Miller's moving difference function is incapable of being used for selecting specified data entries in a database. Consequently, because Miller's moving difference function is structurally identical to that in the claimed invention,[3] we find that absent any evidence to the contrary, the disclosed moving difference function is capable of being used to select designated data entries in a database.

Furthermore, given our finding that the Muret-Tsuchida combination teaches that the plurality of parallel processing modules are executing a query in parallel to select from a database data entries pertaining to a user in a single session, the ordinarily skilled artisan would have readily appreciated that using Miller's moving difference function to help facilitate such selection of entries would only require routine skill in the art.

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[2] *See In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) ("Jung argues that the Board gave improper deference to the examiner's rejection by requiring Jung to 'identif[y] a reversible error' by the examiner, which improperly shifted the burden of proving patentability onto Jung. *Decision* at 11. This is a hollow argument, because, as discussed above, the examiner established a prima facie case of anticipation and the burden was properly shifted to Jung to rebut it. . . . '[R]eversible error' means that the applicant must identify to the Board what the examiner did wrong . . . .").

[3] We note that while claim 1 is directed to a method, because it is argued together with apparatus claim 11, which also recites the disputed limitations, our analysis with regard to intended use in an apparatus claim still applies to the method of claim 1.

Additionally, in considering the general form of Appellants' arguments in the principal Brief, we note that one cannot show nonobviousness by attacking the references individually where the rejections are based on *combinations* of references. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Here, the respective references relied on by the Examiner must be read, not in isolation, but for what the *combination* teaches or suggests when considered as a whole. Because Appellants attack the cited references separately, we find Appellants' arguments unpersuasive of Examiner error. Therefore, based upon our review of the record, we agree with and adopt the Examiner's underlying factual findings and ultimate legal conclusion of obviousness regarding claim 1.

Therefore, we find unpersuasive Appellants' argument that the combination of Muret, Tsuchida, and Miller does not teach or suggest the disputed limitations. It follows that Appellants have not shown error in the Examiner's conclusion that the proffered combination renders claim 1 unpatentable.

Claims 2-24 (not argued separately) fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(vii).

DECISION

We affirm the Examiner's rejection of claims 1-24.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

Vsh